



# Memorandum

**TO:** CITY COUNCIL

**FROM:** Mayor Chuck Reed

**SUBJECT: COUNCIL LABOR NEGOTIATION  
GUIDELINES**

**DATE:** January 14, 2011

Approved

*Chuck Reed*

Date

*1/14/11*

## RECOMMENDATION

Modify Council Policy 0-39, Council Labor Negotiation Guidelines, as attached.

## BACKGROUND

During my most recent quarterly meeting with the City Labor Alliance (CLA), several members of the CLA told me that the negotiation process could be improved if the bargaining units could be certain that offers they make would be accurately presented to the City Council.

Since presentations of offers are usually made in closed session, there is no way for the CLA to be made aware of the content of the presentations. Sometimes they seek meetings with individual Councilmembers to explain their offers. That has resulted in situations where all members of the Council are not getting the same information or where bargaining units have drawn inaccurate conclusions about the Council's direction to our negotiating team.

We can help resolve these issues by changing the way offers are presented to the Council so that they are done in open sessions. That way the bargaining units can comment on the presentation, everyone will get the same information at the same time, and we can be more open and transparent with the public.

I am recommending some modifications to Council Policy 0-39 to implement these changes.

***DRAFT***  
*City of San José, California*

**COUNCIL POLICY**

<b>TITLE</b> Council Labor Negotiation <u>and Transparency</u> Guidelines	<b>PAGE</b> 1 of 3	<b>POLICY NUMBER</b> 0-39
<b>EFFECTIVE DATE</b> March 4, 2008	<b>REVISED DATE</b> <u>xxxx</u>	
<b>APPROVED BY COUNCIL ACTION</b>	<u>3/4/2008, Item 3.6, Res. No. 74265</u>	

**BACKGROUND**

Collective bargaining is governed by the Meyers-Milias-Brown Act (MMBA), the City of San Jose Employer-Employee Relations Resolution (#39367) and the City Charter. The City Charter designates the City Manager as the chief administrative officer of the City. Accordingly, Resolution #39367 delegates the authority to negotiate labor contracts on behalf of the City to the City Manager or the City Manager's designee.

Pursuant to the Meyers-Milias-Brown Act, the City has a right to insist that contract negotiations take place at the bargaining table between the designated representatives of the City and the designated representatives of the various bargaining unit employees. Members of the City Council ~~shall refrain from negotiating directly with employee representatives~~ shall not negotiate with employee representatives. Both the City and the bargaining units have an obligation under applicable laws to negotiate in good faith and not to bypass the negotiation teams.

As used in this policy, "negotiate" means to meet and confer with another to endeavor to reach agreement on matters within the scope of representation.

Unless agreed to by the City and the bargaining unit, negotiation sessions are confidential, but there is great public interest in having information about the negotiations available for public review.

**PURPOSE**

This policy applies only to the Mayor, members of the City Council, ~~and~~ Mayor and Council staff, and Council Appointees.

References in this policy to members of the City Council or Council staff include the Mayor and Mayor's staff.

The purpose of this policy is to set guidelines for the City Council and Council staff to ensure labor negotiations are conducted in good faith, ~~and~~ to avoid actions that would circumvent the City's designated bargaining team, and to provide timely and accurate information about the negotiations to the City Council and the public.

**POLICY**

# DRAFT

## City of San José, California

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It is the policy of the City Council that all of its members and staff and Council Appointees shall abide by the following guidelines when the City Manager or the City Manager's designee is in negotiations with any bargaining unit:

1. Pursuant to San Jose Resolution #39367, negotiations are conducted by the City Manager through his/her designee. Accordingly, negotiations regarding potential proposals and possible settlement shall occur between the City's designated negotiator(s) and the union's designated negotiator(s).
2. Pursuant to Section 411 of the City Charter, while the Council may express its views to the City Manager, the Council shall not interfere with the execution by the City Manager of his or her authority and duty to negotiate on behalf of the City.
3. Members of the City Council or Council staff or other Council Appointees shall not negotiate with the bargaining unit representatives or persons acting on their behalf.
4. In order to avoid misunderstandings and potential unfair labor practices, unless requested by the City Manager, members of the City Council or Council staff or other Council Appointees should not discuss with any bargaining unit representative or persons acting on their behalf any matter that is a subject of the negotiations while the City and the bargaining units are engaged in the negotiation process. The negotiating process shall be defined as the time period starting with the first negotiation session until a resolution has been achieved. This provision does not apply when the City Attorney is handling litigation on matters that are subject to negotiations, interest arbitration, or when the City Attorney is contacted by a bargaining unit's designated legal counsel to discuss legal issues. The City Attorney shall notify the City Manager of any communications to ensure coordination with the legal issues and Council direction to the City Manager for labor negotiations.
- 4.5. Nothing in this policy shall prohibit members of the City Council or Council staff from listening to bargaining unit representatives or persons acting on their behalf. Members of the City Council shall not knowingly respond to or discuss any proposals ~~not presented to the negotiating team~~ or any confidential closed session discussion.
6. Nothing in this policy shall preclude the City Manager from requesting the assistance of the City Attorney or other Council Appointees in carrying out the responsibilities as the Municipal Employee Relations Officer.
- 5.7. Members of the City Council and City Council staff shall disclose to the City Manager and to the entire City Council ~~material communications~~ material facts regarding issues related to ongoing negotiations. (See Council Policy 0-32 regarding disclosure of material facts).

# DRAFT

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6-8. Authorization and direction to the ~~City's negotiating team~~ City Manager is provided in closed or open session. If done in closed session, in order to maintain the integrity of the negotiation process, ~~such authorization~~ closed session discussions must remain confidential.

9. Written Proposals made or received shall be posted for public review on the City's web site after the proposals have been submitted to the designated negotiators.

10. The City Manager will provide periodic updates on labor negotiations to the City Council in open session except for elements that are required to be held confidential. These updates shall include a summary of proposals exchanged since the last update.

11. Bargaining unit representatives or persons acting on their behalf may comment on the City Manager's open session labor negotiations update. This shall be done during open session to ensure all of the Council receives the same information. The City Council may listen to these statements made in the public forum, but shall not respond to the comments, or engage in dialogue or any other form of bargaining with the representatives.